

Title 10: Education Institutions and Agencies

Part 603: Administrative Policies

Part 603 Chapter 1: Availability of Information

Rule 1.1 Availability of Information.

- I. Information concerning the following is available on the Board's website www.mississippi.edu/postsecondary under the Policies and Procedures document: Board purpose, composition, terms of office, and meeting information; duties and responsibilities of the Office of Student Financial Aid; establishment of new student financial aid programs; modification of student financial aid programs; reporting; compliance with state and federal regulations; student rights and responsibilities; institutional responsibilities; funding; general administration rules and regulations; and program rules and regulations;
- II. Pursuant to the Mississippi Public Records Acts of 1983 (the "Act"), effective from and after July 1, 1983, the Board hereby adopts the following regulations and procedures with respect to such public records as may be in its possession. Such rules and procedures are applicable to and shall govern the right to inspect, copy, or reproduce or obtain a reproduction of any public records in the possession of the Board.
 - A. Any person wishing to inspect or copy public records must make the request in writing to the Board and must clearly identify the specific information sought. All requests should be dated and include the name of requester, address of the requestor, and current contact information for the requestor. Any response by the Board for a request for access to records will be forwarded to the requesting party within seven (7) working days of the receipt of such request. If the Board is unable to produce the requested record within seven working days after the request is made, the Board shall provide a written explanation to requestor(s) stating that the record will be produced and specifying with particularity why the record(s) cannot be produced within the seven-day period. Absent a mutual agreement between the parties, in no event shall the date for the Board's production of requested records be any later than fourteen (14) working days from receipt by the Board of the original request.
 - B. Denial by the Board of a request for access to or copies of public records shall be in writing and shall contain a statement of the specific exemption relied upon by the Board for the denial. A file of all denials of requests for public records will be maintained by the Board for a period of no less than three (3) years from the date such denials are made.
 - C. Recipient(s) will be assisted by a staff member at a charge not to exceed actual costs. Actual costs for search, review and/or possible redaction of information by a staff member will be based upon the hourly rate of compensation for the lowest

paid agency employee qualified to perform the task and multiplied by the actual time utilized to complete the task. Recipient(s) will be charged fifteen cents per page for standard black and white photocopies. For all nonstandard photocopies, actual costs of reproduction will be assessed to recipient(s). Records will be available for inspection and copying by appointment during regular working hours, Monday through Friday, holidays excluded.

- D. Recipient(s) will deposit cash, check, or money order in escrow with the staff prior to receiving material. This estimated amount must be sufficient to cover the estimated cost of the staff member's assistance, copying fees, mailing fees, and/or any associated reproduction fees. Recipient(s) desiring information by mail will be charged actual mailing costs in addition to those costs set forth in subsection (c).
- E. Adequate space to inspect requested documents will be provided at no cost, if available. Recipient(s) will be provided requested documents by a staff member but no more than one recipient at a time.
- F. All written requests must be submitted to:

Mississippi Postsecondary Education Financial Assistance Board
3825 Ridgewood Road
Jackson, MS 39211

Source: *Miss. Code Ann.*, § 25-61-1 - 17, as amended.

Part 603 Chapter 2: Oral Proceeding

Rule 2.1 Request for Oral Proceeding. When a political subdivision, an agency, or ten (10) citizens request(s) an oral proceeding in regards to a proposed rule adoption, the requestor must submit a printed, typewritten, or legibly handwritten request. Each request must include the full name, telephone numbers, physical and mailing address(es) of the requestor(s). All requests shall be signed by the person submitting the request, unless represented by an attorney, in which case the attorney may sign the request.

Source: *Miss. Code Ann* § 25-43-105 (Rev. 2006).

Rule 2.2 Notice of Oral Proceeding. Notice of the date, time, and place of all oral proceedings shall be filed with the Secretary of State's Office for publication in the Administrative Bulletin. The Board will provide notice of oral proceedings to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of the notice with the Secretary of State. The chair, or his/her designee who is familiar with the substance of the proposed rule, will preside at the oral proceeding on a proposed rule.

Source: *Miss. Code Ann* § 25-43-105 (Rev. 2006).

Rule 2.3 Public Participation Guidelines. Public participation will be permitted at oral proceedings in accordance with the following:

- I. At an oral proceeding on a proposed rule, persons may make statements and present documentary and physical submissions concerning the proposed rule.
- II. Persons wishing to make oral presentations at such a proceeding shall notify the Board at least five business days prior to the proceeding and indicate the general subject of their presentations.
- III. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- IV. The presiding officer may place time limitations on individual presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- V. Persons making presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.
- VI. Where time permits and to facilitate the exchange of information, the presiding officer may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding. No participant shall be required to answer any question.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006)

Rule 2.4 Submissions and Records. Physical and Documentary Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board, part of the rulemaking record, and are subject to the Board's public records request procedure. The Board may record oral proceedings by stenographic or electronic means.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Part 603 Chapter 3: Declaratory Opinions

Rule 3.1 Application of Chapter. This chapter sets forth the Board's rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in

relation to the written requests, and the Board's procedures regarding the disposition of requests as required by Mississippi Code § 25-43-2.103.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.2 Scope of Declaratory Opinions. The Board will issue declaratory opinions regarding the applicability to specified facts of:

- I. A statute administered or enforceable by the Board,
- II. A rule promulgated by the Board, or an order issued by the Board.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.3 Scope of Declaratory Opinion Request. A request must be limited to a single transaction or occurrence.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.4 How to Submit Requests. When a person with substantial interest, as required by Section 25-43-2.103 of the Administrative Procedures Act, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request.

- I. Each request must be submitted on 8-1/2" x 11" white paper.
- II. The request may be in the form of a letter addressed to the Board or in the form of a pleading as if filed with a court.
- III. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
- IV. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.
- V. Each request must clearly state that it is a request for a declaratory opinion.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.5 Signature Attestation. Any party who signs the request shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative, or judicial tribunal.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.6 Request Content Requirement. Each request must contain the following:

- I. A clear identification of the statute, rule, or order at issue;
- II. The question for the declaratory opinion;
- III. A clear and concise statement of all facts relevant to the question presented;
- IV. The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number; and
- V. A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.7 Reasons for Refusal of Declaratory Opinion Request. The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- I. The matter is outside the primary jurisdiction of the Board;
- II. Lack of clarity concerning the question presented;
- III. There is pending or anticipated litigation, administrative action or anticipated administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- IV. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- V. The facts presented in the request are not sufficient to answer the question presented;
- VI. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- VII. The request seeks to resolve issues which have become moot or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought;
- VIII. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;
- IX. The question presented by the request concerns the legal validity of a statute, rule, or order;

- X. The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- XI. No clear answer is determinable;
- XII. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
- XIII. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- XIV. The question is currently the subject of an Attorney General's opinion request;
- XV. The question has been answered by an Attorney General's opinion;
- XVI. One or more requestors have standing to seek an Attorney General's opinion on the proffered question;
- XVII. A similar request is pending before the Board, or any other agency, or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law; or
- XVIII. The question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.8 Agency Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board will, in writing:

- I. Issue an opinion declaring the applicability of the statute, rule, or order to the specified circumstances;
- II. Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or
- III. Decline to issue a declaratory opinion, stating the reasons for its action. The forty-five (45) day period shall begin on the first business day after which the request is received by the Board.

Source: *Miss. Code Ann.* § 25-43-2.103 (Rev. 2006).

Rule 3.9 Finality of Declaratory Opinions. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

Source: *Miss. Code Ann.* § 25-43-2.105 (Rev. 2006).

Rule 3.10 Availability of Declaratory Opinions and Requests for Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name, subject, and date of issue. Declaratory opinions and requests that contain information that is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Source: *Miss. Code Ann.* § 25-43-2.103 (Rev. 2006).